



MOTOR VEHICLE FUEL TAX REGULATIONS

The Motor Vehicle Fuel License Tax Regulations were renamed "Motor Vehicle Fuel Tax Regulations" to conform to the change in the name of the law which became effective January 1, 2002

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MOTOR VEHICLE FUEL TAX REGULATIONS

CALIFORNIA CODE OF REGULATIONS
Title 18. Public Revenues
Division 2. State Board of Equalization—Business Taxes
Chapter 1. Motor Vehicle Fuel Tax

Regulation 1101. MOTOR VEHICLE FUEL.

Reference: Sections 7304, 7306, 7307, 7313, 7316, 7317, 7318, and 7326, Revenue and Taxation Code.

(a) “Motor vehicle fuel” includes aviation gasoline, gasohol, finished gasoline, gasoline, gasoline blendstocks, and blended motor vehicle fuel.

“Motor vehicle fuel” does not include diesel fuel, jet fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or racing fuel. “Motor vehicle fuel” does not include ethanol (ethyl alcohol), methanol (methyl alcohol), or blends of gasoline and alcohol (including any denaturant) containing 15 percent, or less, gasoline.

(b) “Aviation gasoline” means all special grades of gasoline that are suitable for use in aviation reciprocating engines and covered by ASTM specification D 910 or military specification MIL-G-5572.

(c) “Finished gasoline” means all products (including gasohol) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel, other than products that have an ASTM octane number of less than 75 as determined by the motor method.

(d) “Gasohol” means all blends of gasoline and alcohol (including any denaturant) containing more than 15 percent gasoline.

(e) “Gasoline” means finished gasoline and gasoline blendstocks.

(f) “Gasoline Blendstocks”

(1) “Gasoline blendstocks” includes:

- (A) Alkylate;
- (B) Butane;
- (C) Butene;
- (D) Catalytically cracked gasolin;
- (E) Coker gasoline;
- (F) Ethyl tertiary butyl ether (ETBE);
- (G) Hexane;
- (H) Hydrocrackate;
- (I) Isomerate;

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- (J) Light naphtha;
- (K) Methyl tertiary butyl ether (MTBE);
- (L) Mixed xylene (not including any separated isomer of xylene);
- (M) Naphtha;
- (N) Natural gasoline;
- (O) Pentane;
- (P) Pentane mixture;
- (Q) Polymer gasoline;
- (R) Raffinate;
- (S) Reformate;
- (T) Straight-run gasoline;
- (U) Straight-run naphtha;
- (V) Tertiary amyl methyl ether (TAME);
- (W) Tertiary butyl alcohol (gasoline grade) (TBA);
- (X) Thermally cracked gasoline;
- (Y) Toluene; and
- (Z) Transmix containing gasoline.

(2) “Gasoline blendstocks” does not include any product that cannot, without further processing, be used in the production of finished gasoline. For example, a mixed hydrocarbon stream that is produced in a natural gas processing plant is not a gasoline blendstock if the stream cannot be used to produce finished gasoline without further processing.

(g) “Blended motor vehicle fuel” means any mixture of motor vehicle fuel with respect to which tax has been imposed and any other liquid on which tax has not been imposed. “Blended motor vehicle fuel” also means any conversion of a liquid into motor vehicle fuel. “Conversion of a liquid into motor vehicle fuel” occurs when any liquid that is not included in the definition of motor vehicle fuel and that is outside the bulk transfer/terminal system is sold as motor vehicle fuel, delivered as motor vehicle fuel, or represented to be motor vehicle fuel. “Blended motor vehicle fuel” does not include racing fuel.

(h) “Racing fuel” means a fuel that meets all of the criteria for leaded racing fuel set forth in subdivision (1) or all of the criteria for unleaded racing fuel set forth in subdivision (2).

(1) LEADED RACING FUEL.

(A) Generally is used in vehicles not eligible to be registered for highway use in any state;

(B) Is not diesel fuel, kerosene, or gasoline blendstock;

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- (C) Has an octane rating of 100 or higher;
- (D) Contains 1.0 gram of lead per gallon or more;
- (E) Does not meet the ASTM specification (D 4814) for gasoline.

(2) UNLEADED RACING FUEL.

- (A) Is not diesel fuel, kerosene, or gasoline blendstock;
- (B) Has an octane rating of 100 or higher;
- (C) Does not meet the California Air Resources Board specification for gasoline.

History: Effective March 15, 1948.

Amended Effective September 1, 1953.

Amended Effective September 8, 1962.

Amended December 8, 1970, effective January 15, 1971.

Amended July 28, 1982, effective December 5, 1982. Added the last sentence of each paragraph referring to gas—alcohol blends, ethanol and methanol.

Amended May 6, 1986, effective July 18, 1986. In first paragraph, defines “motor vehicle fuel” to include “aviation gasoline”. In second paragraph, defines “motor vehicle fuel” to exclude certain inflammable liquids.

Amended March 27, 2002, effective July 11, 2002. Totally revised regulation to reflect changes in the definition of motor vehicle fuel under the Motor Vehicle Fuel Tax Law that took effect on January 1, 2002. Added Subdivisions (a) through (h) to provide additional definitions, and added explanations and list of motor vehicle fuels, gasoline blendstocks, and racing fuels.

Regulation 1105. TAX-PAID FUEL AND EX-TAX FUEL.

Reference: Sections 7345, 7401, 7653, 8101, and 8106.8, Revenue and Taxation Code.

(a) “Tax-paid fuel” is the gallonage of motor vehicle fuel acquired with the California motor vehicle fuel tax paid. An acquisition of motor vehicle fuel will be considered taxpaid only if it can be supported by one of the following:

(1) A sales invoice or a contract which clearly states that the tax is included in the invoice or contract and proof that the amount representing motor vehicle fuel tax has been paid, or

(2) A motor vehicle fuel purchase receipt showing that the amount paid for the fuel included the motor vehicle fuel tax, or

(3) Other documentation showing that the motor vehicle fuel tax has been paid to the state.

(b) “Ex-tax fuel” is the gallonage of motor vehicle fuel acquired without the California motor vehicle fuel tax paid.

Regulation 1105. (Contd.)

History: Adopted February 5, 1986, effective May 4, 1986. In subdivision (a)(1) added definition of tax-paid fuel and explains the support required to consider the fuel tax paid. In subdivision (a)(2) added definition of ex-tax fuel. In subdivision (b)(1) added explanation that a distributor or broker is relieved of further liability of tax on the number of gallons upon which the tax has been paid. In subdivision (b)(2) added explanation that a distributor is not relieved of its liability to report and pay tax on taxable distributions when the distributor fails to invoice or collect the tax. In subdivision (b)(3) added explanation that a distributor is liable to the state for the tax on ex-tax fuel distributed to a qualified distributor when the distributor indicates the fuel is tax-paid fuel by invoicing or collecting the tax.

Amended March 27, 2002, effective July 11, 2002. Repealed former subdivisions (b)(1), (b)(2), and (b)(3) because tax is imposed on a supplier upon removal, entry, or sale of motor vehicle fuel instead of on the distribution by a distributor or broker, pursuant to change in Motor Vehicle Fuel Tax Law that took effect on January 1, 2002. Therefore, on and after January 2, 2002, it is no longer necessary to explain the continuing tax liability of a distributor upon distribution of fuel. Subdivisions (a) and (b) revised to clarify definitions of “tax-paid fuel” and “ex-tax fuel”. Added subdivision (a)(2) to define purchase receipt which shows that tax was included in the amount a purchaser paid for the motor vehicle fuel as the type of documentation which supports a claim that fuel is tax-paid.

Regulation 1111. HIGHWAY.

Reference: Section 7319, Revenue and Taxation Code.

A highway includes a way or place, of whatever nature, within the exterior boundaries of the State including a way or place within a Federal area, publicly maintained and open to the use of the public for purposes of vehicular travel, notwithstanding private participation in the maintenance of the way or place.

A way or place within a national or State forest which is entirely privately maintained, or a road over which forest products are transported in a national or State forest privately constructed or maintained pursuant to an existing agreement with the public authority having jurisdiction thereof will not be considered a highway notwithstanding the fact that it may be declared by the public authority to be a part of its road system.

A way or place under the jurisdiction of the United States Department of Agriculture within a national forest including private property within or adjacent thereto, which way or place is open to public use, is a highway but the tax is refundable on the fuel used in the operation of a motor vehicle thereon by any person who for the use of such highway pays, or contributes to, the cost of construction or maintenance of the way or place pursuant to an agreement with, or permission of, the United States Department of Agriculture. (See Section 8101.1, Revenue and Taxation Code.)

Regulation 1111. (Contd.)

A way or place is not a highway within the meaning of Section 7319 of the Revenue and Taxation Code, during such times as it is closed by the governmental authority to the use of the public regardless of the purpose for which it is closed. A highway is open to the use of the public if vehicular travel is permitted although subject to traffic controls.

History: Effective March 21, 1958.

Amended December 5, 1968, effective January 8, 1969.

Change without regulatory effect amending last paragraph and amending Note filed June 5, 2002.

Regulation 1120. RETURNED SALES

Reference: Section 7354, Revenue and Taxation Code.

(a) When motor vehicle fuel included in a supplier's taxable removals, entries or sales is returned to the supplier by the customer to whom it was sold and is delivered into a refinery or an approved terminal's storage tank, the supplier may either file a claim for refund with the State Controller or in lieu of the refund take a credit on its tax return. The credit memorandum covering the return of the motor vehicle fuel shall identify the gallonage returned as either volumetric gallons or temperature corrected gallons based upon how the tax was originally invoiced to the customer and shall separately state the motor vehicle fuel tax.

(b) It shall be presumed that the supplier purchased the motor vehicle fuel that was returned as tax-paid motor vehicle fuel if the credit memorandum includes motor vehicle fuel tax. For purposes of a refund or credit, it also shall be presumed that the subsequent removal of the motor vehicle fuel from a terminal rack by the supplier that received the returned motor vehicle fuel is made in the month that the motor vehicle fuel was returned.

(c) CONDITIONS TO ALLOW A CREDIT ON A TAX RETURNS.

The credit will be allowed only if:

(1) The returned motor vehicle fuel was delivered into a refinery or an approved terminal storage tank.

(2) The credit is taken on a tax return filed within three months after the close of the calendar month in which the motor vehicle fuel is returned.

(3) The supplier prepares a first taxpayer's report (as identified in Regulation 1161) when the motor vehicle fuel is returned.

Regulation 1120. (Contd.)

(4) A copy of the first taxpayer's report and the credit memorandum must be retained for inspection by the Board with the tax return on which the credit is claimed.

(d) If the supplier fails to take credit on a tax return filed within three months after the close of the calendar month in which the motor vehicle fuel was returned, the supplier may only file a claim for refund with the State Controller to recover the tax. The claim for refund must be filed with the State Controller within three years from the date of return of the fuel. Each claim for a refund must contain the following information with respect to the motor vehicle fuel covered by the claim:

- (1) The information required in Section 8102.
- (2) Volume and type of motor vehicle fuel.
- (3) Date on which the claimant received the returned motor vehicle fuel.
- (4) A copy of the first taxpayer's report that relates to the motor vehicle fuel covered by the claim.
- (5) A copy of the credit memorandum that returned the motor vehicle fuel.

History: Effective March 15, 1948.

Amended effective October 17, 1959.

Amended February 26, 1969, effective April 1, 1969.

Amended July 8, 1971, effective July 20, 1971.

Amended March 27, 2002, effective July 11, 2002. Subdivision (a) amended to refer to a supplier instead of distributor and to clarify how a supplier is to handle motor vehicle fuel returned by a customer, pursuant to statutory changes effective January 1, 2002. Deleted former subdivision (b), invoice correction, and sections (b)(1) and (b)(2). Added new subdivision (b) to clarify regulation presumptions. Added subdivision (c) to list conditions required to allow a credit on a tax return, and subdivision (d) to list information and documentation that is required to be included in a claim for refund.

Regulation 1122. CONVERSION FACTOR.

Reference: Sections 7315, 7360, 7392, 7651, 7652.5, and 7652.7, Revenue and Taxation Code.

For reporting purposes, all measurements must be in terms of gallons. To convert liters to gallons, the quantity of liters shall be multiplied by .26417 to determine the equivalent quantity in gallons. The resulting figure shall be rounded to the nearest tenth of a gallon.

History: Adopted April 9, 1980, effective June 19, 1980.

Change without regulatory effect amending Note filed June 5, 2002.

Regulation 1123. SUPPLIER.

Reference: Sections 7307, 7308, 7309, 7310, 7311, 7312, 7324, 7326, 7329, 7332, 7333, 7334, 7335, 7336, 7338, 7339, 7340, 7341, 7360, 7362, 7363, 7365, 7366, 7368, 7369, 7370, 7371, 7372, 7451, 7651, and 7652.5, Revenue and Taxation Code.

(a) RETURNS. All suppliers must prepare and file returns with the Board to report tax on motor vehicle fuel. Returns are due at the end of the month following the calendar month in which the motor vehicle fuel was removed, entered, or sold, unless the Board requires that a return be filed for a different period. A terminal operator who also is a position holder in motor vehicle fuel within the terminal or is jointly and severally liable for the tax is required to file both the terminal operator report and the supplier return.

(b) IMPOSITION OF TAX. Tax applies to each supplier as follows:

(1) **BLENDER.** A blender is required to pay the tax on the removal or sale of motor vehicle fuel blended outside the bulk transfer/terminal system. The number of gallons of blended motor vehicle fuel subject to the tax is the difference between the total number of gallons of blended motor vehicle fuel removed or sold and the number of gallons of tax-paid motor vehicle fuel used to produce the blended motor vehicle fuel.

(2) **ENTERER.**

(A) An enterer is required to pay the tax when the enterer imports motor vehicle fuel into the state by means outside of the bulk transfer/terminal system

(B) An enterer is required to pay the tax when the enterer removes or sells motor vehicle fuel within a pipeline or terminal to an unlicensed person.

(C) An enterer is required to pay the tax when the entry is by bulk transfer and the enterer is not a licensed supplier.

(D) For purposes of proper imposition of tax, entry occurs when fuel is brought into the state, provided, however, that when entry is by bulk transfer, entry occurs as follows:

1. When fuel is received at a marine terminal, entry occurs at the landside of the flange.

2. When fuel is removed from a vessel in this state to a lighter for the purpose of lightering, entry occurs at the vessel side of the flange upon the removal of fuel from a vessel in this state to the lighter; provided, however, that if the lighter unloads or discharges the fuel at a marine terminal, then entry occurs at the land side of the flange as to the fuel received at the marine terminal. As used herein, "lightering" is the use of small, shallow-draft boats in transshipment to shore of oil or other fuel from a large, deep-draft vessel unable to dock at shore facilities because of shallow water. The small boats are called lighters.

3. When fuel is removed from a vessel in this state to another vessel in this state, and the fuel is not unloaded or discharged at a marine terminal, then entry occurs when the fuel is brought into the state.

Regulation 1123. (Contd.)

(3) POSITION HOLDER.

(A) A position holder that holds an inventory position in the motor vehicle fuel as reflected on the records of the terminal operator is required to pay the tax when the motor vehicle fuel is removed from the terminal rack.

(B) A position holder is required to pay the tax when the position holder removes or sells motor vehicle fuel within or without the bulk transfer/terminal system to an unlicensed person.

(4) REFINER.

(A) A refiner is required to pay the tax when the motor vehicle fuel is removed at a terminal rack located at a refinery.

(B) A refiner is also required to pay the tax when the removal of motor vehicle fuel is by bulk transfer (e.g., transfer by pipeline or vessel) and the refiner or the owner of the motor vehicle fuel immediately before the removal is not a licensed supplier.

(C) A refiner is required to pay the tax when the refiner removes or sells motor vehicle fuel within or without the bulk transfer/terminal system to an unlicensed person.

(5) TERMINAL OPERATOR. A terminal operator is jointly and severally liable for and may be required to pay the tax when the motor vehicle fuel is removed at the rack if both subsections (A) and (B) below apply:

(A) The position holder with respect to the motor vehicle fuel is a person other than the terminal operator and is not a licensed supplier.

(B) The terminal operator is not a licensed supplier and either (i) does not have an unexpired notification certificate from the position holder as required by the Internal Revenue Service or (ii) has an unexpired notification certificate from the position holder, but has reason to believe or knows that any information in the certificate is false.

(6) THROUGHPUTTER. A throughputter is required to pay the tax when the throughputter removes or sells motor vehicle fuel within or without the bulk transfer/terminal system to a person who is not a licensed supplier.

| *History:* Adopted March 27, 2002, effective July 11, 2002.

Regulation 1124. RELIEF FROM LIABILITY.

Reference: Section 7657.1, Revenue and Taxation Code.

A person may be relieved from the liability for the payment of the motor vehicle fuel tax and aircraft jet fuel tax, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and

Regulation 1124. (Contd.)

such failure was found by the board to be due to reasonable reliance on written advice given by the board as described in [California Code of Regulations, Title 18, Section 4902](#).

History: Adopted March 27, 2002, effective July 11, 2002.

Amended February 5, 2003, effective May 28, 2003. The underscored citation indicates an electronic hyperlink to the cite. Common administrative provisions for special taxes programs have been consolidated in Chapter 9.9 Special Taxes Administration. Requirements for relief from liability can be found at the referenced cite.

Regulation 1132. SHIPMENTS OUT OF THE STATE.

Reference: Sections 7338, 7401, 7651, 8101, 8102, 8105, 8106.5, 8126, 8128, 8129, 8301, and 8303, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) **EXPORT.** An export of motor vehicle fuel is the delivery or shipment of fuel by the supplier from a point in this state to a point outside of this state. The fuel is not exported if it is diverted in transit or for any reason is not actually delivered out of this state, regardless of documentary evidence held by the supplier respecting delivery of the fuel to a carrier for out-of-state shipment or to a vessel clearing for an out-of-state port.

(2) **CARRIER.** A carrier means a person or firm who is regularly engaged in the business of transporting for compensation property owned by other persons and includes both common and contract carriers. The carrier may be hired by either the purchaser or the distributor.

(b) REQUIREMENTS. A supplier may not claim an export exemption from motor vehicle fuel tax under Revenue and Taxation Code Section 7401(a)(3) unless the motor vehicle fuel is in fact exported and the export is accomplished in the manner specified in either (1) or (2) below:

(1) The supplier claiming the exemption from tax shows that it delivered the motor vehicle fuel to any vessel clearing from a port of this state for a port outside of this state and the fuel was actually exported from this state in the vessel; or

(2) The supplier claiming the exemption from tax shows that it exported the motor vehicle fuel from this state pursuant to a written contract requiring delivery by the supplier of the fuel to:

(A) the out-of-state point by facilities operated by the supplier,

(B) a carrier for shipment to a consignee at the out-of-state point, or

(C) a customs broker or forwarding agent for shipment to a location outside of this state.

Regulation 1132. (Contd.)

(c) EXPORTS OF EX-TAX FUEL. The tax does not apply to the export of ex-tax motor vehicle fuel actually exported.

A supplier must claim the exemption for the export of ex-tax fuel on the return filed for the period in which the export was made. If a supplier fails to claim the exemption on the return and tax is erroneously paid on the ex-tax export of fuel, a timely claim for refund must be filed with the Board pursuant to Section 8128 of the Motor Vehicle Fuel Tax Law in order to obtain a refund of the amount of taxes so overpaid.

(d) EXPORTS OF TAX-PAID FUEL. In lieu of claiming a refund of tax for export of tax-paid fuel with the State Controller as provided by Section 8101(b) of the Revenue and Taxation Code, a supplier may take a credit on its return for tax-paid fuel when the fuel is exported to a point outside the state. The credit must be claimed on a return filed within three months after the close of the calendar month in which the tax-paid fuel is exported. If the credit exceeds the taxable gallons of motor vehicle fuel for the period in which the credit may be taken, refund of the tax on the excess gallonage can only be obtained by filing a claim for refund with the State Controller.

Failure to take credit on a return filed within three months after the close of a calendar month in which the tax-paid fuel is exported does not give rise to a right to file a claim for refund with the Board pursuant to Section 8126 of the Revenue and Taxation Code. Instead, claims for refund for tax-paid fuel exported must be filed with the State Controller within three years from the date of purchase of the fuel.

(e) DOCUMENTATION REQUIRED FOR SUPPORT. All shipments of motor vehicle fuel to points outside of the state for which tax exemption or credit is claimed on a tax return shall be reported on a schedule accompanying the return for the period for which the exemption or credit is claimed.

The supplier must retain documentation to support the delivery of the fuel by the supplier at an out-of-state location for all exemptions or credits. Documentation may include, but is not limited to, contracts, bills of lading, delivery tickets, or meter readings. The supplier has the burden of providing the proper substantiation and documentation to support the exemption or credit.

History: Effective March 15, 1948.

Amended effective February 16, 1956.

Amended effective October 1, 1959.

Amended November 7, 1963, effective December 12, 1963.

Amended April 9, 1980, effective June 19, 1980. In the first paragraph, subparagraph (a)(2) deleted "as consignor" following "distributor."

Amended February 5, 1986, effective May 1, 1986. In subdivision (a) amended definition of export. In subdivision (b) added explanation of the exemption from tax of ex-tax fuel exported. In subdivision (c) added explanation of how a credit may be taken for tax-paid fuel exported. In subdivision (d) amended explanation concerning documentation required to support an export.

Amended January 8, 1991, effective March 17, 1991. Subsection (a) was divided into two subparagraphs and the definition of the term "carrier" was added as subsection (a)(2). Subsection (c) changed the time limit for taking a credit in

lieu of refund and deleted reference to filing a claim if credit was not claimed on a return. Subsection (d) deleted the words “or credit” in the first paragraph. Amended November 18, 1999, effective February 20, 2000.

Amended March 27, 2002, effective July 11, 2002. Regulation amended to replace references to “distributor” with references to “supplier” throughout regulation, pursuant to statutory changes to the Motor Vehicle Fuel Tax Law that became effective on January 1, 2002. In subdivisions (c) and (d), deleted language pertaining to stock transfers of ex-tax fuel to a point outside California, as the language is no longer relevant, pursuant to changes in the imposition of tax that took effect January 1, 2002.

Regulation 1134. SALES TO THE UNITED STATES.

Reference: Sections 7401 and 8101, Revenue and Taxation Code.

Sales of motor vehicle fuel to the United States, its agencies and instrumentalities are taxable, except when the motor vehicle fuel is sold to the United States armed forces for use in ships or aircraft, or for use outside this State. “Armed forces” include the Army, Navy, Air Force, Marines, and Coast Guard.

To establish that a sale to the armed forces is exempt the seller must obtain a certificate from the agency of the armed forces purchasing the fuel that it is acquired for use (a) in ships, (b) in aircraft or (c) outside the State. This certificate may be incorporated in the purchase order or contract relating to the acquisition of the fuel by the governmental agency. All such certificates should be retained by the seller for audit purposes.

(b) SALES OF EX-TAX MOTOR VEHICLE FUEL.

A supplier licensed under the Motor Vehicle Fuel Tax Law that makes sales of ex-tax motor vehicle fuel to the United States armed forces for use in ships or aircraft, or for use outside this State, may claim an exemption on its motor vehicle fuel tax return.

(c) SALES OF TAX-PAID MOTOR VEHICLE FUEL.

Any person who makes sales of tax-paid motor vehicle fuel to the United States armed forces for use in ships or aircraft, or for use outside this State, may file a claim for refund of the tax with the State Controller.

History: Effective September 15, 1961.

Amended November 7, 1963, effective December 12, 1963.

Amended July 8, 1971, effective July 20, 1971.

Amended April 1, 1983, effective May 2, 1983. In third paragraph added “or brokers” and changed “Section 7451 et seq.” to “Sections 7486 and 7487;” changed all references to “Section 7401(e)” to “subdivision (a)(5) of Section 7401;” changed all references to “Sections 7401(c)” to “subdivision (a)(3) of Section 7401;” in last paragraph deleted “but . . . than \$500,000” and inserted “Sections 7486 and 7487.”

Amended March 27, 2002, effective July 11, 2002. First two paragraphs of former regulation designated as subdivision (a) and within (a) former references to “distribution” and “distributor” were replaced with “sales” and “seller” to

MOTOR VEHICLE FUEL TAX REGULATIONS

Regulation 1134. (Contd.)

conform with new Motor Vehicle Fuel Tax Law effective January 1, 2002. Subdivision (b) added to clarify that a supplier making a sale of ex-tax fuel to the United States armed forces may claim an exemption on the supplier's tax return. Subdivision (c) added to clarify that any person making a sale of tax-paid fuel to the United States armed forces shall file a claim for refund of the tax with the State Controller. Remainder of former regulation repealed since Revenue and Taxation Code Sections 7401, 7486, and 7487 (relating to exemptions for distributors and brokers and to bond requirements of distributors and brokers) were repealed pursuant to statutory changes to the Motor Vehicle Fuel Tax Law that became effective on January 1, 2002.

Regulation 1137. EXEMPT SALES OF JET FUEL.

Reference: Sections 7385-7398, Revenue and Taxation Code.

(a) IN GENERAL. Sales of aircraft jet fuel for propulsion of aircraft are subject to tax except sales, to the following:

(1) A common carrier by air engaged in the business of transporting persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the authority of the laws of this state, of the United States or of any foreign government.

(2) A person engaged in the business of constructing or reconstructing by manufacture or assembly of completed aircraft or modifying, overhauling, repairing, maintaining or servicing of aircraft.

(3) The armed forces of the United States.

(b) EVIDENCE TO SUPPORT EXEMPTION.

(1) Exempt sales to common carriers and aircraft manufacturers must be supported by an exemption certificate as prescribed below.

Name of Aircraft Jet Fuel Purchaser

Address of Aircraft Jet Fuel Purchaser

This is to certify that all aircraft jet fuel purchased from _____
is exempt from aircraft jet fuel tax as a sale to:

Check one

- ☐ (a) A common carrier by air engaged in the business of transporting persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the authority of the laws of this state, of the United States or of any foreign Government. Certificate of public convenience and necessity number _____.

Regulation 1137. (Contd.)

- ☐ (b) A person engaged in the business of constructing or reconstructing by manufacture or assembly of completed aircraft or modifying, overhauling, repairing, maintaining or servicing of aircraft.

This certificate is valid until revoked in writing.

Purchaser _____

By _____

Date _____

(2) Exempt sales to the armed forces must be supported by a government purchase order or other evidence of sale to the armed forces of the United States.

(3) It is necessary to obtain only one certificate to cover all sales. The certificate is valid until revoked in writing.

(c) LIABILITY OF PERSON GIVING CERTIFICATE. Any person who certifies in writing to a jet fuel dealer that the sale or use of the aircraft jet fuel purchased by him is not subject to the jet fuel tax and who uses such fuel as an aircraft jet fuel user is liable for the tax with respect to such fuel at the time of such use. Such person shall report and pay the tax to the board as though he were an aircraft jet fuel dealer who made a taxable sale of the fuel at the time of the use.

History: Adopted November 5, 1969, effective November 10, 1969.
Amended January 8, 1970, effective February 7, 1970.
Amended December 8, 1970, effective January 15, 1971.
Change without regulatory effect amending Note filed June 5, 2002.

Regulation 1161. TAX PAID TWICE ON MOTOR VEHICLE FUEL

Reference: Sections 7362, 7363, 8101, 8102, 8105, 8106.8, and 8127.5, Revenue and Taxation Code.

(a) A supplier who removes motor vehicle fuel from a terminal rack on which a prior tax was paid to the state may either file a claim for refund with the State Controller or in lieu of a refund take a credit on its tax return.

(b) CONDITIONS TO ALLOW A CREDIT ON A TAX RETURN.

The credit will be allowed only if:

(1) A tax imposed on the motor vehicle fuel by Sections 7362 and 7363 was paid to the state by reporting the gallons on a tax return and was not credited or refunded (the “first tax” or “first taxpayer”);

(2) After imposition of the first tax, another tax was imposed on the motor vehicle fuel by Sections 7362 and 7363 and was paid to the state by reporting the gallons on a tax return (the “second tax” or “second taxpayer”);

Regulation 1161. (Contd.)

(3) The person that paid the second tax to the state claims a credit on a tax return filed within three months after the close of the calendar month in which the second tax was reported to the state;

(4) The person that paid the first tax to the State has met the reporting requirements of paragraph (c) of this section; and

(5) A copy of the first taxpayer's report and any copies of statements of subsequent seller must be retained for inspection by the Board with the tax return on which the credit is claimed.

(c) REPORTING REQUIREMENTS.

(1) **REPORTING BY PERSONS PAYING THE FIRST TAX.** Except as provided in paragraph (c)(2) of this section, the person that paid the first tax under Section 7362 and 7363 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in Exhibit A and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be retained for inspection by the Board with the tax return on which the first tax was paid or reported.

(2) **OPTIONAL REPORTING FOR CERTAIN TAXABLE EVENTS.** Paragraph (c)(1) does not apply with respect to a tax imposed under Section 7362 (removal at a terminal rack), Section 7363(b)(2) (nonbulk entries into the state), or Section 7363(d) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be imposed under Sections 7362 and 7363 with respect to the fuel, that person should file a first taxpayer's report.

(3) INFORMATION PROVIDED TO SUBSEQUENT OWNERS, ETC.

(A) By Person Required to File First Taxpayer's Report. A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to:

1. The person to whom the first taxpayer sells the motor vehicle fuel within the bulk transfer/terminal system; or
2. The owner of the motor vehicle fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(B) By Person Filing Optional First Taxpayer's Report. A first taxpayer filing a first taxpayer's report under paragraph (c)(2) of this section should give a copy of the report to:

1. The person to whom the first taxpayer sells the motor vehicle fuel; or
2. The owner of the motor vehicle fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(C) By Person Receiving First Taxpayer's Report.

1. **Bulk Transfer/Terminal System Transaction.** A person that receives a copy of the first taxpayer's report and subsequently sells the motor vehicle fuel within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer.

Regulation 1161. (Contd.)

2. Rack and Below Rack Transaction. A person that receives a copy of the first taxpayer's report and subsequently sells the motor vehicle fuel outside the bulk transfer/terminal system should give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer, if that person expects that another tax will be imposed under Sections 7362 and 7363 with respect to the motor vehicle fuel.

(D) Form of Statement. A statement satisfies the requirements of this paragraph (c)(3)(D) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This statement must contain all information necessary to complete the model statement provided in Exhibit B but need not be in the same format.

(E) Sale to Multiple Buyers. If the first taxpayer's report relates to motor vehicle fuel divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the motor vehicle fuel is divided and each buyer must be given a copy of the report.

(d) CLAIM FOR REFUND.

If the supplier fails to take a credit on a tax return filed within three months after the close of the calendar month in which the second tax was imposed, the supplier may only file a claim for refund with the State Controller to recover the tax. The claim for refund must be filed with the State Controller within three years from the date of purchase of the motor vehicle fuel.

Each claim for a refund must contain the following information with respect to the fuel covered by the claim:

- (1) The information required in Section 8102.
- (2) Volume and type of motor vehicle fuel.
- (3) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).
- (4) Amount of second tax that claimant paid or reported to the state and the tax return on which it was paid or reported.
- (5) A statement that claimant has not separately stated on the sales invoice reimbursement for both the first tax and the second tax or has not included in the sales price of the motor vehicle fuel reimbursement for both the first tax and the second tax. The second taxpayer can only receive reimbursement for one tax from the customer.
- (6) A copy of the first taxpayer's report that relates to the motor vehicle fuel covered by the claim.
- (7) If the motor vehicle fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that motor vehicle fuel.

History: Adopted March 27, 2002, effective July 11, 2002.

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Regulation 1161. (Contd.)

EXHIBIT A

FIRST TAXPAYER'S REPORT

1. First Taxpayer's Board of Equalization supplier account number _____
2. _____
First Taxpayer's name, address, and employer identification number
3. _____
Name, address, and employer identification number of the buyer of the motor vehicle fuel subject to tax
4. _____
Date and location of removal, entry, or sale
and document number _____
5. Volume and type of motor vehicle fuel removed, entered, or sold _____
6. Check type of taxable event:
☐ Removal from refinery
☐ Entry into United States or state
☐ Bulk transfer from terminal by unregistered position holder
☐ Bulk transfer not received at an approved terminal
☐ Sale within the bulk transfer/terminal system
☐ Removal at the terminal rack
☐ Removal or sale by the blender
7. _____
Amount of Federal excise tax paid and State motor vehicle fuel tax paid on account of the removal, entry, or sale
8. Location of IRS service center where this report is filed _____
and State reporting period of payment _____

The undersigned taxpayer (the "Taxpayer") has not received, and will not claim, a credit with respect to, or a refund of, the tax on the motor vehicle fuel to which this form relates.

Under penalties of perjury, the Taxpayer declares that Taxpayer has examined this statement, including any accompanying schedules and statements, and, to the best of Taxpayer's knowledge and belief, they are true, correct and complete.

Signature and date signed

Printed or typed name of person signing this report

Title

Regulation 1161. (Contd.)

EXHIBIT B

STATEMENT OF SUBSEQUENT SELLER

1. _____
Board of Equalization supplier account number or prepaid sales tax account number
2. _____
Name, address, and employer identification number of seller in subsequent sale
3. _____
Name, address, and employer identification number of buyer in subsequent sale
4. _____
Date and location of subsequent sale
and document number _____
5. _____
Volume and type of motor vehicle fuel sold

The undersigned seller (the "Seller") has received the copy of the first taxpayer's report provided with this statement in connection with Seller's purchase of the motor vehicle fuel described in this statement.

Under penalties of perjury, Seller declares that Seller has examined this statement, including any accompanying schedules and statements, and, to the best of Seller's knowledge and belief, they are true, correct and complete.

Signature and date signed

Printed or typed name of person signing this statement

Title

Regulation 1177. RECORDS OF AIRCRAFT JET FUEL DEALER.

Reference: Sections 7385–7398, and 8301, Revenue and Taxation Code.

(a) GENERAL. An aircraft jet fuel dealer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at [California Code of Regulations, Title 18, Section 4901](#).

(b) SPECIFIC APPLICATIONS. In addition to the record keeping requirements set forth in subdivision (a), aircraft jet fuel dealers shall comply with the following requirements.

Aircraft jet fuel dealers shall maintain the following:

(1) A complete record of all sales or other dispositions of jet fuel including fuel used by the aircraft jet fuel dealer.

(2) A record of inventories, purchases, and tank gaugings or meter readings of jet fuel.

(3) SALES INVOICES.

(A) The aircraft jet fuel dealer shall prepare a serially numbered paper or electronic invoice for each sale of jet fuel. A single invoice covering multiple deliveries of fuel to the same purchaser made during a period of time not to exceed a calendar month shall constitute an invoice for each sale.

(B) If a multiple delivery invoice includes both taxable and nontaxable sales, the invoice must show a segregation of the taxable and nontaxable gallonage sold.

(C) A copy of the invoice shall be delivered to the purchaser, and a copy retained by the aircraft jet fuel dealer.

(D) A sales invoice shall contain the following information:

1. The name and address of the aircraft jet fuel dealer,
2. The name of the purchaser,
3. The date of the sale,
4. The number of gallons sold, the price per gallon and the total amount of the sale, and
5. The amount of jet fuel tax, in the case of a taxable delivery. The tax need not be separately stated if the invoice bears the notation that the price includes tax.

History: Adopted November 5, 1969, effective November 10, 1969.

Change without regulatory effect amending Note filed June 5, 2002.

Amended February 5, 2003, effective May 28, 2003. The underscored citation indicates an electronic hyperlink to the cite. Common administrative provisions for special taxes programs have been consolidated in Chapter 9.9 Special Taxes Administration. General record keeping requirements can be found at the cite referenced in subdivision (a). Subdivision (b) has been added to identify additional record keeping requirements for aircraft jet fuel dealers.

Regulation 1178. RECORDS.

Reference: Sections 7403.2, 7651, 7652.5, 7652.7, 8253, 8301, 8302, and 8303, Revenue and Taxation Code.

(a) GENERAL. A taxpayer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at [California Code of Regulations, Title 18, Section 4901](#).

(b) SPECIFIC APPLICATIONS. In addition to the record keeping requirements set forth in subdivision (a), suppliers shall comply with the following requirements.

A supplier shall maintain complete records of all rack removals, sales, imports and exempt dispositions including exemption certificates, self-consumed fuel, inventories, purchases, receipts, and tank gaugings or meter readings, of motor vehicle and any other fuel that is required to be accounted for on the supplier's return or report. Such records include but are not limited to:

- (1) Refinery Reports related to the production of motor vehicle fuel.
- (2) Inventory reconciliation by location.
- (3) Storage inventory reports.
- (4) List of storage locations.
- (5) Tax returns from other states to support export claims.
- (6) Cardlock statements.
- (7) Calculations or formulas to support off-highway exempt usage.
- (8) First Taxpayer Reports.

History: Adopted March 27, 2002, effective July 11, 2002.

Amended February 5, 2003, effective May 28, 2003. The underscored citation indicates an electronic hyperlink to the cite. Common administrative provisions for special taxes programs have been consolidated in Chapter 9.9 Special Taxes Administration. General record keeping requirements can be found at the cite referenced in subdivision (a). Subdivision (b) has been added to identify additional record keeping requirements for motor vehicle fuel suppliers.

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